

**LAW OFFICES OF
LOUIS E. GITOMER**

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October 8, 2008

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
Washington, DC 20423

RECORDATION NO. 27690 FILED

OCT 08 '08 -2 48 PM

SURFACE TRANSPORTATION BOARD

Dear Acting Secretary Quinlan:

I have enclosed for efilng the document described below, to be recorded pursuant to 49 U.S.C. § 11301.

The document is a Memorandum of Lease Agreement, a primary document, dated as of September 29, 2008. We request that this document be given the next available recordation number.

The names and addresses of the parties to the Memorandum of Lease Agreement are:

Lessor:

Banc of America Leasing & Capital, LLC
2059 Northlake Parkway, 4 South
Tucker, GA 30084

Lessee:

The Scotts Company LLC
14111 Scottslawn Road
Marysville, OH 43041

A description of the equipment covered by the Memorandum of Lease Agreement consists of one Rail King RK290 Mobile Rail Car Mover numbered RCM758.

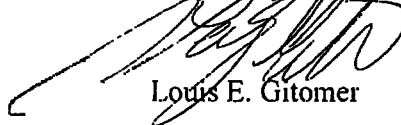
Honorable Anne K. Quinlan
October 8, 2008
Page 2

A fee of \$41.00 is enclosed. Please return one copy by email to:

Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204
Lou Gitomer@verizon.net

A short summary of the document to appear in the index follows: a Memorandum of Lease Agreement between Banc of America Leasing & Capital, LLC, 2059 Northlake Parkway, 4th Floor, Tucker, GA 30084-4431, and The Scotts Company LLC, 14111 Scottslawn Road, Marysville, OH 43041, covering one Rail King RK290 Mobile Rail Car Mover numbered RCM758.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Lou Gitomer', is written over the typed name.

Louis E. Gitomer

Enclosure

RECORDATION NO. 27690 FILED

OCT 08 '08 -2 48 PM

SURFACE TRANSPORTATION BOARD

MEMORANDUM OF LEASE AGREEMENT

dated as of September 29, 2008

between

**THE SCOTTS COMPANY LLC,
as Lessee,**

and

**BANC OF AMERICA LEASING & CAPITAL, LLC,
as Lessor**

**FILED WITH THE SURFACE TRANSPORTATION BOARD
PURSUANT TO 49 U.S.C. § 11301**

on _____, _____ at ____:____.m.

MEMORANDUM OF LEASE AGREEMENT

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of September 29, 2008, by and between BANC OF AMERICA LEASING & CAPITAL, LLC ("Lessor") and THE SCOTTS COMPANY LLC ("Lessee"), with reference to the following:

1. Lessor has agreed to purchase and lease to Lessee, and Lessee has agreed to lease from Lessor, those certain rail car mover described on Exhibit No. 1 attached hereto.

All of such railcars are more fully described in that certain Master Lease Agreement dated as of March 2, 2007, and Acceptance Certificate and Tax Lease Schedule No. 17075-90000-049 thereto and incorporating the terms thereof, dated as of September 29, 2008 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee.

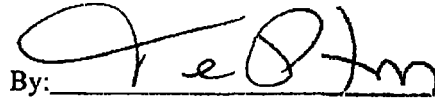
2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

This Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

BANC OF AMERICA LEASING & CAPITAL, LLC

By: 

Name: Terri J. Preston

Title: Vice President

THE SCOTTS COMPANY LLC

By: 

Name: Barb Lowe-Rausch

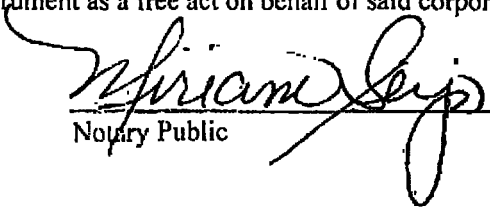
Title: Senior Buyer

STATE OF OHIO)

COUNTY OF FRANKLIN) ss.

On this 3 day of October, 2008, before me appeared Barb Lowe-Rausch, the person who signed this instrument, who acknowledged that (s)he is the Global Purchasing-Senior Buyer of THE SCOTTS COMPANY LLC. and that, being duly authorized, (s)he signed such instrument as a free act on behalf of said corporation.

[Seal]


Notary Public

My commission expires:

5-6, 2013

MIRIAM SEJO
Notary Public, State of Ohio
My Commission Expires 05-08-2013

STATE OF MARYLAND)
COUNTY OF Carroll) ss.
~~BALTIMORE~~)

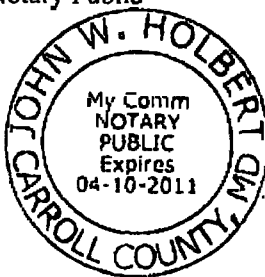
On this 6th day of October, 2008, before me appeared Terri J. Preston, the person who signed this instrument, who acknowledged that (s)he is the Vice President of BANC OF AMERICA LEASING & CAPITAL, LLC and that, being duly authorized, (s)he signed such instrument as a free act on behalf of said corporation.

[Seal]

John W. Holbert
Notary Public

My commission expires:

April 10, 2011



**EXHIBIT NO. 1
TO MEMORANDUM OF LEASE AGREEMENT**

DESCRIPTION OF RAIL CAR MOVER AND REPORTING MARKS

Rail King RK290 Mobile Rail Car Mover, s/n RCM758